



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-830

Certain Dimmable Compact Fluorescent Lamps and Products Containing Same

Termination as to Three Respondents on the Basis of Settlement; Decision to Review an Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the investigation as to three respondents on the basis of settlement. The Commission has also determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on February 27, 2013, finding no violation of section 337 of the Tariff Act of 1930 in this investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 27, 2012, based on a complaint filed by Andrzej Bobel and Neptun Light, Inc., both of Lake Forest, Illinois (collectively, "Neptun"). 77 FR 11587 (Feb. 27, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337, by reason of the infringement of certain claims of United States Patent Nos. 5,434,480 ("the '480 patent") and 8,035,318 ("the '318 patent"). The complaint named numerous respondents, many of whom have been terminated from the investigation on the basis of settlement agreement, consent order, or withdrawal of the complaint. The remaining respondents are Technical Consumer Products, Inc. of Aurora, Ohio; Shanghai Qiangling Electronics Co., Ltd. of Shanghai, China; Zhejiang Qiang Ling Electronic Co. Ltd. of Zhenjiang, China (collectively, "TCP"); U Lighting America Inc. of San Jose, California ("ULA"); and Golden U Lighting Manufacturing (Shenzhen) of Shenzhen, China ("Golden U"). Claim 9 of the '480 patent is asserted against ULA and Golden U, and claims 1 and 12 of the '318 patent are asserted against TCP.

On February 27, 2013, the ALJ issued his final Initial Determination ("ID"). The ID found no violation of section 337 on the basis of Neptun's failure to satisfy the economic prong of the domestic industry requirement of section 337. The ALJ also found that respondent TCP's accused products do not infringe the asserted claims of the '318 patent.

On March 12, 2013, Neptun filed a petition for review of the ID; TCP and ULA each filed a contingent petition for review of the ID. On March 20, 2013, Neptun opposed TCP's and ULA's petitions, and TCP and ULA each opposed Neptun's petition. On April 3, 2013, the Commission extended the whether-to-review deadline and the target date by approximately six weeks. Notice (Apr. 3, 2013).

On June 10, 2013, Neptun and TCP filed an unopposed joint motion to terminate the investigation as to TCP on the basis of a settlement agreement between Neptun and TCP. The Commission finds that it is in the public interest to terminate the investigation as to TCP on the basis of settlement, and the Commission grants the joint motion.

Turning to the petitions for review of the ID, having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the ALJ's finding that Neptun did not satisfy the domestic industry requirement. The Commission has also determined to review the ALJ's claim construction of "integrated into" in claim 9 of the '480 patent, as well as the ALJ's finding of infringement insofar as the finding is based upon that construction. The Commission has determined not to review the remainder of the ID.

In connection with the Commission's review, the parties are asked to respond only to the questions enumerated below. For all other matters under review, the Commission finds the extensive briefing before the ALJ and the petitions for review to be sufficient. Each party should address questions 1-4 in its opening brief, and may respond to each other's arguments in reply.

Neptun should address question 5 in its opening brief, with ULA addressing question 5 in ULA's reply brief.

- (1) What is the plain and ordinary meaning of “integrated into” (include citations to the record where you made such arguments to the ALJ)? In the context of an electronic circuit, does the construction of “integrated into” as “in some way connected to” render superfluous that claim term, including the word “into”?
- (2) Whether the specification of the '480 patent (including the passages cited in ULA's petition for review at pages 26-32) supports a construction of “integrated into” in which the boosting circuit uses downstream rectified current to perform boosting. If not, explain whether you contend that the specification limits the term “integrated into” to something other than its plain and ordinary meaning.
- (3) Whether the prosecution history of the '480 patent permits a construction of “integrated into” in which the boosting circuit is downstream from the rectifier, and where the rectifier itself does not perform boosting.
- (4) Whether the boosting circuit in ULA's accused products uses downstream rectified current to perform boosting, and whether ULA's products meet the “integrated into” claim limitation, literally or under the doctrine of equivalents.

(5) Which of complainants' asserted expenses constitute investments that fall under 19 U.S.C. 1337(a)(3)(C), such as investments in engineering, research and development, or licensing? Please identify and provide a reasonable estimate, based on the evidence of record, of the portion of these expenses that are associated with the exploitation of the '480 patent. Please explain, qualitatively, how these expenses – and the underlying activities that these expenses reflect – relate to exploitation of the '480 patent.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and

welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions as set forth above. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainants are also requested to submit proposed remedial orders for the Commission's consideration. The complainants are also requested to state the date that the '480 patent expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Tuesday June 25, 2013 and responses to the Commission's questions should not exceed 60 pages. Reply submissions must be filed no later than the close of business on

Wednesday, July 3, 2013 and such replies should not exceed 40 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-830") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of

1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42-46 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42-46).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: June 12, 2013

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